

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON and RENEE C.)	
OLLIE,)	CASE NO. 6034-U-85-1129
)	
Complainant,)	DECISION 2684 - PECB
)	
vs.)	
)	
HIGHLAND SCHOOL DISTRICT,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Eric T. Nordloff, attorney at law, appeared on behalf of the complainant.

Gavin, Robinson, Kendrick, Redman & Pratt, Inc., P.S., by Michael Leavitt, attorney at law, appeared on behalf of the respondent.

On October 17, 1985, Public School Employees of Washington (union) filed a complaint charging unfair labor practices on behalf of Renee C. Ollie, alleging that Highland School District No. 203 (employer) violated RCW 41.56.140(1) by its discharge of Renee C. Ollie. An amended complaint filed on February 7, 1986 altered the theory of the case to a "refusal to bargain" allegation under RCW 41.56.140(4) based on a refusal to provide information claimed necessary to the processing of a grievance concerning the discharge of Ollie. A hearing was conducted on June 10, 1986 in Yakima, Washington, before Jack T. Cowan, Examiner. The parties filed post-hearing briefs.

BACKGROUND

A collective bargaining agreement existed between the employer and the union for the period September 1, 1982 through August 31, 1985. Renee C. Ollie was an employee of Highland School District during the period from 1979 to 1985, and was covered by that collective bargaining agreement.

Ollie was discharged from her position as library aide on June 7, 1985. Upon her discharge, Ollie pursued a grievance under the procedures provided by the collective bargaining agreement. The discharge was sustained by action of the Highland School Board on August 21, 1985, as the final step in the grievance process.

The collective bargaining agreement provides for appeals of grievances under Chapter 28A.88 RCW. On September 17, 1985, Ollie filed a complaint and notice of appeal of the August 21, 1985 decision with the Superior Court for Yakima County, contending she had been discharged without justifiable or sufficient cause in violation of the collective bargaining agreement.

On November 12, 1985, the complainant issued a notice of deposition and request for production to Sharon Jordan, the librarian at Tieton Middle School; to Don G. Riggin, the superintendent of schools for the Highland School District; and to David Jaegar, the principal of Tieton Middle School. Papers and documents requested included:

1. All records, correspondence, notes, documents, maps, diagrams, internal memoranda, or other writings relating in any manner to the allegations of the complaint in this lawsuit, or the Answer, to include specifically, all

communications between the Board of Directors of Highland School District No. 203 and the Superintendent, or any employee, thereof.

2. All records, correspondence, notes, documents and contracts relating in any matter to the collective bargaining agreement that is material to this lawsuit, including all documents relating to the negotiating sessions which resulted in the agreement, including specifically, all communications between the Board of Directors of Highland School District No. 203, and the Superintendent, or any employee, thereof.
3. The complete personnel files of plaintiff Ollie, David Jaegar, Sharon Johnson, and Melanie Milre.
4. All records, correspondence, notes, documents, maps, internal memoranda, diagrams, or other writings which relate in any manner to the termination from employment of any employee of the Defendant Highland School District No. 203, within the five years immediately preceding Plaintiff Ollie's termination, including specifically, all communications between the Board of Directors of Highland School District No. 203 and the Superintendent, or any employee, thereof.

On December 6, 1985, the employer responded to the request for production as follows:

1. The documents, papers, and other writings relating to the dismissal of the plaintiff and other grievances in this lawsuit are already of public record. Defendant will again produce copies of those documents for plaintiff at plaintiff's expense if additional copies are required.

2, 3, & 4. Defendant objects to the production of these documents. They are confidential and relate to matters which are not material or relevant to this litigation. Defendant will make available to the plaintiff for her inspection her complete personnel file; however, the personnel files of other district employees will not be made available based on objections above stated, unless the same is ordered by the Court. Defendant's termination of employment of employees other than Renee Ollie is totally immaterial and irrelevant and may subject defendant to claims from such employees for improper disclosure. Therefore, those requested items will not be produced unless ordered by the Court.

A request for production served on the employer on December 23, 1985, included the following:

1. All written personnel/staff evaluations prepared by David Jaegar during the period of his employment with defendant school district.
2. All written personnel/staff evaluations prepared by Sharon Jordan during the period of her employment with the defendant school district.

The appellants filed a motion with the Superior Court on January 15, 1986, seeking an order compelling the employer to produce those documents described in the December 23, 1985 request for production of documents. A memorandum in opposition of motion to compel was filed by the employer on January 22, 1986.

On January 24, 1986, a hearing was held in the Superior Court before the Honorable Bruce P. Hanson on the motion to compel production. The court ordered the defendant to produce those documents described in the request for production of documents

except that evaluations of other employees were not to be included.

A motion for discretionary review was filed on behalf of Ollie on February 3, 1986, arguing relevancy of the evaluations for the successful presentation of the case. An emergency motion for stay was requested on February 3, 1986, followed on February 5, 1986 by a document entitled "Supplementary Materials and Argument to Petitioners Motion for Discretionary Review" in which it was argued that performance deficiencies capable of being remedied are not grounds for discharge absent warnings of progressive discipline.

On February 5, 1986, the employer offered a response to the motion for discretionary review, emphasizing that the termination of Ollie's employment took place because of reasons other than evaluation.

The motion for discretionary review was denied by the Court of Appeals, Division III on February 7, 1986.

A hearing on the substantive issues in the case was held in the Superior Court on February 10, 1986, before the Honorable Walter A. Stauffacher. Aligning with the ruling of the Court of Appeals, which he quoted in part as follows:

There is an ... acknowledged absence of any Washington authority establishing relevancy of other employees' evaluations in a discharge case

Judge Stauffacher quashed the subpoena. In the subsequent Judgement and Order, the court found the termination of Ollie's employment to have been based on sufficient or justifiable cause and the complaint was dismissed with prejudice.

POSITIONS OF THE PARTIES

The complainants claim an inability to successfully prosecute the grievance concerning the discharge of Renee Ollie because of the employer's refusal to disclose information which the union deemed necessary to police and administer the collective bargaining agreement. The employer's refusal to provide requested information is claimed to constitute a refusal to bargain in violation of RCW 41.56.140(4).

The employer contends that the request for information was made pursuant to proceedings in the Superior Court and Court of Appeals, that the employer believed it was complying with applicable statutes and court decisions by refusing to supply documents without the proper authorization, and that these requests for production were denied by the court.

DISCUSSION

The powers and duties of the Public Employment Relations Commission are set forth in RCW 41.58.020 to include:

* * *

- (4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective bargaining agreement. The Commission is directed to make its mediation and fact-finding services available in the settlement of such grievance disputes only as a last resort.

Chapter 41.56 RCW regulates collective bargaining between school districts and classified employees. In RCW 41.56.122:

A collective bargaining agreement may:

* * *

- (2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of a collective bargaining agreement.

Both RCW 41.58.020 and RCW 41.56.122(2) thus permit and endorse "grievance arbitration" as a dispute resolution mechanism within the collective bargaining process for matters of interpretation or application of an existing collective bargaining agreement.

In this case, the employer and the union have a bargaining relationship under Chapter 41.56 RCW. Along with the duty of the employer under that statute to bargain in good faith comes the duty to provide the union with information relevant and necessary to the union's performance of its functions as exclusive bargaining representative in the collective bargaining process. Toutle Lake School District, Decision 2474 (PECB, 1986); also, Pullman School District, Decision 2632 (PECB, 1987).

A dispute has arisen between the employer and the union as to the discharge of Renee Ollie. The dispute was initially processed within the collective bargaining process. The collective bargaining agreement between the parties does not include provisions for final and binding arbitration of grievance disputes concerning interpretation or application of the contract. Rather, the contract specifies the school board as the final step in the grievance process.

After the parties exhausted the dispute resolution mechanisms available within the contract, the union pursued the dispute beyond the collective bargaining process regulated by Chapter

41.56 RCW and the Public Employment Relations Commission, by filing an "appeal" and/or "breach of contract" suit in the civil courts. In City of Tacoma, Decision 322 (PECB, 1978), the Commission held that negotiations for the settlement of civil litigation were controlled by the rules of civil courts and cannot give rise to an unfair labor practice, even though the underlying dispute originated as a collective bargaining dispute. Applying that precedent to the instant case, the union's right of access to information is controlled by the rules and decisions of the civil court to which the dispute has been taken. The instant case is thus factually and legally distinguished from Pullman School District, supra, where the dispute remained within the collective bargaining process regulated by Chapter 41.56 RCW and the Commission maintained jurisdiction, holding that the employer's refusal to provide information as requested was an unfair labor practice in violation of RCW 41.56.140(4).

The union has filed an appeal from the February 10, 1986 decision of the Superior Court, and must continue to look to the courts for relief on all of its claims regarding either "discovery" or the substance of the discharge.

Costs are not a consideration here, since no unfair labor practice violation could be found. See: Anacortes School District, Decision 2464-A (EDUC, 1986).

FINDINGS OF FACT

1. Highland School District is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(5).

3. A collective bargaining agreement existed between the school district and Public School Employees for the period of September 1, 1982 through August 31, 1985.
4. Renee C. Ollie was a library aide employed by the Highland District during the period from 1979 until her termination on June 7, 1985. Her employment was under the aforesaid collective bargaining agreement. A grievance was initiated under the collective bargaining agreement concerning the discharge of Ollie.
5. The termination of Ollie's employment was ratified by the school board on August 21, 1985, thereby exhausting the dispute resolution procedures under the collective bargaining agreement.
6. On September 17, 1985, Ollie filed a complaint and notice of appeal with Superior Court of Yakima County, contending she had been discharged without justifiable or sufficient cause in violation of the collective bargaining agreement.
7. On November 12, 1985, a demand was made on school district in the Superior Court proceedings for certain information claimed to be necessary to the processing of that case, including records of personnel who were disciplined within the previous five-year period.
8. The employer declined to provide the requested information, alleging confidentiality of personnel records and contending that a majority of the information and records requested involved staff outside the union's jurisdiction.
9. The Superior Court and Court of Appeals have ruled on the discovery motions made in the civil proceedings pending

before the courts. In a Judgement and Order, the court found the discharge of Ollie to have been based on sufficient or justifiable cause and the complaint was dismissed with prejudice.

CONCLUSIONS OF LAW

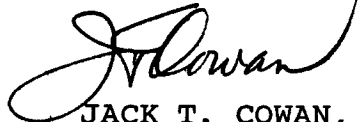
1. By filing a complaint and notice of appeal with the Superior Court for Yakima County, the complainant(s) in those proceedings have moved the dispute concerning the discharge of Renee Ollie outside the collective bargaining process regulated by Chapter 41.56 RCW.
2. The Public Employment Relations Commission lacks jurisdiction under RCW 41.56.160 to determine issues concerning discovery in civil proceedings pending before the courts.
3. The record fails to establish a refusal to provide information concerning a matter pending in the collective bargaining process or a violation of RCW 41.56.140(4).

ORDER

The complaint in the above-entitled matter is dismissed.

DATED at Olympia, Washington, this 12th day of May, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.